IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No. 21 of 2005
In
COMPANY APPLICATION No. 224 of 2003
In
COMPANY PETITION No. 259 of 1999

with
OJ CIVIL APPLICATION No.73 OF 2006
in
O.J.APPEAL No. 21 of 2005

with
OJ CIVIL APPLICATION No.111 of 2005
in
O.J.APPEAL No. 21 of 2005

with
OJ APPEAL No.22 OF 2005
in
COMPANY APPLICATION No.222 of 2003

with
OJ CIVIL APPLICATION No.112 OF 2005
in
O.J.APPEAL No.22 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAFATLAL INDUSTRIES LTD. - Appellant(s)
Versus
LKP MERCHANT FINANCING LTD. - Opponent(s)

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Appearance :
MR AS VAKIL for Appellant(s) : 1,
MRS SWATI SOPARKAR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 20/03/2006

COMMON ORAL JUDGMENT (Per:HONOURABLE MR.JUSTICE R.S.GARG)

Hearing in the matter on the question of admission commenced at 11.25 AM. It is 12.50 Noon. More than an hour and 25 minutes we heard the parties. During the course of the arguments, Mr.A.S. Vakil made a submission to the Court that the present is an appeal, which requires consideration. When we asked him that what this statement meant, he said that the appeal be admitted and it be heard. The statement made by Mr.Vakil is not palatable. When the Judges hearing arguments of the parties much beyond what is needed and also tolerating

the repetitions on the factual grounds, so also on the legal aspects, if do not agree with the submissions made by a particular counsel for either side, that does not mean that such loose language should be used.

2. It is not in dispute before us that on 23rd September 1999, the learned Company Judge issued an order and required the present appellant company to keep apart a sum of Rs.1,38,47,333-00, which was said to be due to the petitioning creditor. It appears that the said order was passed in presence of both the sides.

3. It appears that subsequent to that a reference was made to the BIFR and the BIFR by its order dated 31st October 2002 finalised a scheme whereunder particular amounts payable to different creditors were reduced. The respondent's amount which was of Rs.1.25 crores was reduced to Rs.23 lakhs only. However, the BIFR further directed that the company shall keep apart the sum as directed by High Court under its order dated 23rd September 1999. An undertaking was given by the present appellant company to the BIFR that they will observe the order passed by the High Court.

4. According to Mr.Vakil, out of the settled amount of

Rs.23 lakhs, periodical payments are being made which are being received by the respondent company under protest. He submits that after coming into force of the scheme in accordance with section 18(8) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as “the Act”), the scheme would be binding upon the sick company, the other company, creditors, guarantors, shareholders and the employees of the said companies. He submits that once the scheme was sanctioned and came into effect, the petitions filed by the petitioning creditors would not be continued and would stand withdrawn. It is submitted by him that order dated 23rd September 1999 is not unconditional order. It says that if the company disposes of the property and really sells the same only a sum of Rs.1,38,47,333-00 was required to be kept apart. His further submission is that the statutory consequences of the binding nature of the scheme would be withdrawal or dismissal of all the Company Petitions, wherein the petitioning creditors were seeking winding up of the company.

5. On the other hand Mr.Soparkar, learned counsel for the respondent company submits that section 18 of the Act so far as it relates to subsections (6A) and (8) is concerned, it was amended by the Act 12 of 1994, which

came in force with effect from 1st February 1994. According to him subsection (6A) of section 18 of the Act would relate to merger or demerger and the consequences of the same are illustrated in subsection (8) of section 18 of the Act. He further submits that if the company wants to read subsection (8) of section 18 of the Act dehors subsection (6A) of section 18 of the Act, then the company is required to show to the Court that it has performed its obligation in accordance with the directions of the High Court, the directions issued by the BIFR and the undertaking given by him. According to him the petitions cannot be deemed to be withdrawn nor can be dismissed simply because a sanctioned scheme is floated and it would be binding on all. According to him when the appellant says that the scheme is binding upon all, then it must be held that the scheme is biding upon the appellant company also.

6. At this stage, we do not enter into the controversy relating to subsections (6A) and (8) of sec.18 of the Act, but will presume for a moment that subsection (8) of sec.18 of the Act is to be read independently. Subsec. (8) of sec.18 of the Act says that,

> "On and from the date of the coming into

> operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies."

If the mandate of subsection (8) of sec.18 of the Act is that the scheme would be binding upon the sick industrial company, the other company and its creditors, then the sick industrial company cannot be allowed to say that it would swallow the sweet and throw away the sore. Once the company wants to take advantage of the scheme, then the scheme as a whole would be binding upon it. The company cannot be allowed to say that for one reason or the other, because of voluntary or involuntary sale of property they could not receive any money from the sale proceeds, they would not observe their part of the scheme. The scheme is to be read as a whole. If the scheme is to be read as a whole, subsection (8) of sec.18 of the Act says that the scheme would be binding upon the sick industrial company, so also on the creditors, then the sick company/ appellant company would be obliged to show to the Court that whatever was required of them has

been done by them.

7. Taking into consideration the totality of the circumstances, we are in general agreement with the observations made by the learned Company Judge. The appeal deserves to be and accordingly is dismissed. Consequently the Civil Applications are also dismissed.

8. Mr.Vakil, learned counsel further submitted that in the connected OJ Appeal No.22 of 2005, no such undertaking was ever given by the company, nor any order of keeping apart any money is passed, therefore, OJ Appeal No.22 of 2005 deserves to be allowed.

9. In our considered opinion, no useful purpose would be served by passing a separate order in OJ Appeal No.22 of 2005 especially when the learned Company Judge is proceeding with Company Petition filed at the instance of Messrs LKP Merchant Financing Limited. After giving our thoughtful consideration to the facts and circumstances, so also to the legal provisions, we are of the opinion that all these matters deserve to be dismissed. These are accordingly dismissed.

(R.S. GARG, J.)

(RAVI R. TRIPATHI, J.)

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